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January 4, 2017

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Baltimore, MD 21226

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Health & Safety Director
Baltimore Scrap Corporation
3000 Vera Street
Baltimore, MD 21226

Via Certified Mail – Return Receipt Requested

Re: Notice of Intent to Sue Baltimore Scrap Corporation, Inc. and Old Fairfield, LLC for Clean Water Act Violations at the Metal Scrapyard Facility in Baltimore, Maryland.

Dear Sirs,

The Environmental Integrity Project (EIP) writes on behalf of Blue Water Baltimore and its members to provide notice of their intent to sue Baltimore Scrap Corporation, Inc. and Old Fairfield, LLC for significant and ongoing violations of the Clean Water Act (CWA), 33 U.S.C. § 1251 et seq., at the metal scrapyard facility located at 3000 Vera Street, Baltimore, MD 21226 ("Facility"). The Facility is owned by Old Fairfield, LLC and operated by Baltimore Scrap Corporation, Inc. Both entities are affiliate companies under common ownership by the Simon Family.¹ These serious and ongoing violations have caused and continue to cause discharges of significant amounts of sediment and oil sheen runoff to Baltimore Harbor. Baltimore Harbor forms the mouth of the Patapsco River. Both are waters of the United States and within the Chesapeake Bay watershed.

As explained more fully below, the Facility is routinely discharging sediment-laden stormwater and oil sheen in violation of the terms and conditions of its National Pollutant

¹ According to publicly available records reviewed at a Public Information Act request file review on May 3, 2016.

Discharge Elimination System (NPDES) permit and the CWA. The Facility is also failing to implement required control measures and maintain required inspections and documentation. By failing to comply with its NPDES permit and the CWA, Baltimore Scrap Corporation, Inc. and Old Fairfield, LLC have injured and will continue to injure or threaten to injure the health, environmental, aesthetic, and economic interests of Blue Water Baltimore and its members. These injuries or risks are traceable to violations at the Facility, and correction of these ongoing violations through remedies (including cessation, corrective action, payment of penalties, and supplemental environmental projects) will redress these injuries or risks.

Citizens are entitled to bring suit against “any person...alleged to be in violation” of an “effluent standard or limitation” established under the CWA or “an order issued by...a State with respect to such a standard or limitation.” 33 U.S.C. § 1365(a)(1). Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a point source to waters of the United States except in compliance with, among other conditions, a NPDES permit issued pursuant to section 402 of the CWA, 33 U.S.C. § 1342(a). Moreover, as much as \$37,500 can be imposed per day for each violation of permit limits or conditions, including unpermitted discharges, under the CWA. 33 U.S.C. § 1319(d).² In accordance with Section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A), this letter serves to notify Baltimore Scrap Corporation, Inc. and Old Fairfield, LLC that Blue Water Baltimore intends to file suit for violations of the CWA, unless corrected, in U.S. District Court for the District of Maryland at any time beginning 60 days after the postmarked date of this letter. 40 C.F.R. § 135.2(c).

I. BACKGROUND

The metal scrapyards facility located at 3000 Vera Street, Baltimore, MD 21226 is owned by Old Fairfield, LLC and operated by Baltimore Scrap Corporation, Inc. Both entities are affiliate companies under common ownership.³ The Facility has been operating on-site as Baltimore Scrap Corporation since 1991.⁴ The Facility purchases scrap metal from industry, government, auto salvage yards, demolition contractors, farms, and the general public; it operates 5 days per week and sometimes on Saturdays, about 22-23 hours per day.⁵

The Facility currently operates under the Maryland *General Permit for Discharges from Stormwater Associated with Industrial Activities* (NPDES Permit No. MDR000094; State Permit No. 12-SW) (“General Permit”), effective January 12, 2015, pursuant to section 402 of the

² See also 40 C.F.R. § 19.4 (Civil Monetary Penalty Inflation Adjustment).

³ According to publicly available records reviewed at a Public Information Act request file review on May 3, 2016.

⁴ MDE, Multi-Media Inspection Report (Sept. 27, 2016), pg. 3.

⁵ MDE, Water Management Administration Site Inspection Report (March 14, 2016), pg. 2.

CWA, 33 U.S.C. § 1342(b).⁶ Baltimore Scrap Corporation, Inc. obtained coverage under the General Permit on January 12, 2015 (State Permit Application No. 12SR0094), and coverage expires on December 31, 2018. The Facility is authorized to discharge stormwater into Baltimore Harbor, according to the Permit Registration Letter.⁷ Baltimore Harbor forms the mouth of the Patapsco River. Baltimore Harbor is categorized as Use II waters and protected for water contact recreation, fishing, aquatic life, and wildlife.⁸ These waterways, which are impaired for sediments, are included under the Chesapeake Bay Total Maximum Daily Load (TMDL).

The General Permit prohibits the discharge of stormwater mixed with non-stormwater.⁹ As per the General Permit, the Facility is required to select, design, install, and implement control measures to prevent contamination of stormwater discharges.¹⁰ Other requirements include, but are not limited to:

- minimizing exposure of manufacturing, processing, and material storage areas to stormwater runoff;
- implementing housekeeping measures to keep clean all exposed areas that are potential sources of pollutants;
- minimizing the potential for leaks, spills, and other releases that may be exposed to stormwater;
- stabilizing exposed areas and contain runoff using structural and non-structural control measures to minimize onsite erosion and sedimentation;¹¹ and
- properly handling, storing, and disposing of scrap lead-acid batteries.¹²

The General Permit requires facilities to keep an up-to-date Stormwater Pollution Prevention Plan (SWPPP), which is intended to document the selection, design, and installation

⁶ See Permit, attached hereto as Attachment A.

⁷ Letter from Marjorie Mewbourn, MDE to James Effron, Baltimore Scrap re Registration of Application Number 12SR0094; NPDES Permit Number: MDR000094 (Jan. 12, 2015).

⁸ MD Code Regs. 26.08.02.02; 26.08.02.08.

⁹ Maryland General Discharge Permit (NPDES Permit No. MDR0000; State Permit No. 12-SW) (hereinafter “General Permit”), Part I. Applicability, C. Limitations on Coverage, pg. 3.

¹⁰ General Permit, Part III. Stormwater Management Requirements, B. Control Measures and Effluent Limits, pg. 12.

¹¹ *Id.*, 13-15.

¹² General Permit, Appendix D. Sector Specific Requirements for Industrial Activities, Sector N – Scrap Recycling and Waste Recycling Facilities, pg. 18-21.

of control measures.¹³ All SWPPPs required by the General Permit must identify or contain the following:

- Stormwater pollution prevention team (*see* General Permit, Part III.C.1);
- Site description (*see* General Permit, Part III.C.2);
- Summary of potential pollution sources (*see* General Permit, Part III.C.3);
- Description of control measures (*see* General Permit, Part III.C.4);
- Schedules and procedures (*see* General Permit, Part III.C.5); and
- Required signatures (*see* General Permit, Part III.C.6).

In addition, the Facility must conduct an annual comprehensive site compliance evaluation, quarterly visual inspections, and quarterly routine facility inspections, as per the requirements under Part V.A. of the General Permit, and keep documentation from all inspections and evaluations onsite with the SWPPP.¹⁴

II. VIOLATIONS OF THE CLEAN WATER ACT

A. Discharge of Contaminated Stormwater

Section 303(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of a pollutant by a person into waters of the United States unless such discharge is authorized by and in compliance with a permit. The General Permit prohibits discharges of stormwater that are mixed with non-stormwater.¹⁵ In 2016, the Maryland Department of the Environment (MDE) conducted four site inspections at the Facility (on March 14th, April 7th, May 6th, and September 27th). During each inspection, MDE site inspectors observed sediment-laden stormwater and stormwater runoff with visible steady oil sheen in and near drainage ditches and outlets.

¹³ General Permit, Part III. Stormwater Management Requirements, C. SWPPP Requirements, pg. 17.

¹⁴ General Permit, Part V. A. Site Inspections and Evaluations, pg. 23-25.

¹⁵ General Permit, Part I. Applicability, C. Limitations on Coverage, pg. 3.

Site Inspection Date	Violations Observed
March 14, 2016 ¹⁶	<ul style="list-style-type: none"> • Sediment runoff was observed from the roads on the South side of the property to a drainage ditch that runs through the center of the facility. • Sediment-laden water was observed flowing along the drainage ditch towards the North section of the property into a storm drain inlet. • Stormwater runoff with visible steady oil sheen was observed entering the storm drain inlet on the North section of the property.
April 7, 2016 ¹⁷	<ul style="list-style-type: none"> • Sediment and oil sheen runoff was observed in the drainage ditch that runs through the center of the property.
May 6, 2016 ¹⁸	<ul style="list-style-type: none"> • Sediment runoff was observed to the drainage ditch in the middle of the property. • Sediment-laden runoff was also observed flowing to the drain inlet from the Northeast section of the property. • A lot of sediment-laden was stormwater pooled up and flowing into this inlet in the center of the property. • Oil sheen could be observed coming from the auto scrap staging area.
September 27, 2016 ¹⁹	<ul style="list-style-type: none"> • Oil sheen was observed on the ground beneath the shredder. • Oil spillage was observed on the ground in a pool of accumulated stormwater near a pile of crushed vehicles.

Discharge of contaminated stormwater from the Facility constitutes an unpermitted discharge in violation of the General Permit. This continuing violation occurred from at least March 14, 2016, and each day that such unpermitted discharge occurred or occurs is a separate violation for which penalties of \$37,500 can be assessed.

¹⁶ MDE, Site Inspection Report (Mar. 14, 2016), pg. 2-3.

¹⁷ MDE, Site Inspection Report (Apr. 7, 2016), pg. 2.

¹⁸ MDE, Site Inspection Report (May 6, 2016), pg. 2.

¹⁹ MDE, Multimedia Inspection Report (Sep. 27, 2016), pg. 27.

B. Failure to Minimize Stormwater Exposure to Industrial Activity and Maintain Good Housekeeping Measures

As per the General Permit, the Facility is required to select, design, install, and implement control measures to prevent contamination of stormwater discharges.²⁰ Such control measures must minimize exposure of manufacturing, processing, and material storage areas to stormwater runoff and to implement housekeeping measures to keep clean all exposed areas that are potential sources of pollutants.²¹ Since March 14, 2016, MDE site inspectors have observed shredded metals and non-metals (“fluff”) scattered throughout the site and exposed to stormwater. MDE site inspectors have also observed exposure of batteries and large piles of uncontained shredded metal stockpiles to stormwater.

Site Inspection Date	Violations Observed
March 14, 2016 ²²	<ul style="list-style-type: none">• Fluff material was observed blown around the property in several locations.• Fluff material was observed along the drainage ditch that runs through the East side of the road through the middle of the property.• A battery was observed on top of a fuel tank used for fueling operations off-site. This battery was exposed to stormwater runoff.• Evidence of oil staining in the secondary containment area.
May 6, 2016 ²³	<ul style="list-style-type: none">• The drain inlet in the Northeast section of the property has not been cleaned out since the previous inspection. There is still some of the fluff left over from the shredding process surrounding this drain inlet.
September 27, 2016 ²⁴	<ul style="list-style-type: none">• The Shredded metal stockpiles along the North perimeter and separated shredded “fluff” material were observed.• Fluff material was still present scattered along the North perimeter

²⁰ General Permit, Part III. Stormwater Management Requirements, B. Control Measures and Effluent Limits, pg. 13.

²¹ General Permit, Appendix D. Sector Specific Requirements for Industrial Activities, Sector N – Scrap Recycling and Waste Recycling Facilities, pg. 18-21.

²² MDE, Site Inspection Report (Mar. 14, 2016), pg. 2-3.

²³ MDE, Site Inspection Report (May 6, 2016), pg. 2.

²⁴ MDE, Multimedia Inspection Report (Sep. 27, 2016), pg. 27-28.

Site Inspection Date	Violations Observed
	<p>along the railway track.</p> <ul style="list-style-type: none"> • There were still several miscellaneous pieces of scrap along the perimeter of the Southeast corner of the site. • No form of containment to prevent stormwater contamination from shredded metal stockpiles.

Discharge of contaminated stormwater from the Facility constitutes an unpermitted discharge in violation of the General Permit. Moreover, failure to meet a permit condition also constitutes a violation of the General Permit. These continuing violations occurred from at least March 14, 2016, and each day that an unpermitted discharge occurred or occurs, and each day that the Facility fails to implement required control measures, are separate violations for which penalties of \$37,500 can be assessed.

C. Failure to Perform Required Inspections

The General Permit requires the Facility to perform an annual comprehensive site compliance evaluation.²⁵ A records review at the Facility on March 14, 2016 revealed that no annual comprehensive site inspections had even been performed.²⁶ During the May 6, 2016 site inspection, MDE noted that the Facility was in possession of blank copies of the annual comprehensive site inspection forms, but that the Facility had not completed any of the required inspections to-date.²⁷ During MDE's last site inspection on September 27, 2016, MDE does not mention whether an annual comprehensive inspection report was available for review.²⁸

Given that an annual comprehensive inspection report must be conducted once per year and that the Facility has been covered under the General Permit since January 12, 2015, Baltimore Scrap Corporation, Inc. and Old Fairfield, LLC have been in violation of this permit requirement since January 12, 2016. Accordingly, the Facility is subject to civil penalties of up to \$37,500 per day of violation for each day the Facility fails to complete an annual comprehensive site inspection.

²⁵ General Permit, Part V. A. Site Inspections and Evaluations, pg. 23-25.

²⁶ MDE, Site Inspection Report (Mar. 14, 2016).

²⁷ MDE, Site Inspection Report (May 6, 2016), pg. 3.

²⁸ MDE, Multi-media Inspection Report (Sep. 27, 2016), pg. 28-29.

D. Failure to Maintain a Up-to-Date Stormwater Pollution Prevention Plan

The General Permit requires the Facility to maintain an up-to-date SWPPP.²⁹ This requirement includes maintaining documentation of all required inspections and evaluations along with the SWPPP.³⁰ Although Baltimore Scrap informed MDE on September 20, 2016 that the SWPPP had been appropriately revised,³¹ the Facility admitted that a “final updated SWPPP [] has not yet been completed” during MDE’s September 27th site inspection. As per MDE’s September 27, 2016 site inspection report, the SWPPP is in violation of the General Permit in several ways by failing to:

- Describe and implement a maintenance schedule for new control measures;
- Keep up-to-date personal changes and responsibilities; and
- Accurately describe visual and benchmark monitoring locations.³²

Failure to keep an up-to-date and complete SWPPP is a continuing violation. Accordingly, the Facility is subject to civil penalties of up to \$37,500 per day of violation for each day the Facility’s SWPPP remains outdated.

III. PARTIES GIVING NOTICE

Blue Water Baltimore is a nonprofit organization located in Baltimore, MD. Baltimore Harbor Waterkeeper, a program of Blue Water Baltimore, is responsible for protecting the Patapsco River and Back River watersheds, including all of the neighborhood streams and rivers that discharge into the Patapsco and Back Rivers. Blue Water Baltimore represents more than 5,500 members who use the rivers for recreation and who actively support Blue Water Baltimore’s collective efforts to protect Baltimore’s waterways. Blue Water Baltimore’s mission is to protect and restore Baltimore Harbor and the greater Patapsco and Back Rivers and their tributaries through enforcement, fieldwork, and citizen action in order to make these waterways suitable for recreation (including fishing and swimming), to improve public health, and to improve the health of the aquatic ecosystems.

Blue Water Baltimore’s offices are located at 3545 Belair Road, Baltimore, MD 21213 and the main phone number is (410) 254-1577. Blue Water Baltimore is represented by the

²⁹ General Permit, Part III. Stormwater Management Requirements, C. SWPPP Requirements, pg. 17.

³⁰ General Permit, Part V. A. Site Inspections and Evaluations, pg. 23.

³¹ Letter from Todd R. Chason, Attorney for Baltimore Scrap Corp. to Michael Strande, MDE (Sep. 20, 2016),

³² MDE, Multi-media Inspection Report (Sep. 27, 2016), pg. 30.

Environmental Integrity Project (EIP), a nonprofit law firm located at 1000 Vermont Avenue NW, Suite 1100, Washington, DC 20005 and whose main phone number is (202) 296-8800.

Blue Water Baltimore is represented by the Environmental Integrity Project (EIP), a nonprofit organization located at 1000 Vermont Avenue NW, Suite 1100, Washington, DC 20005 and whose main phone number is (202) 296-8800.

The activities at the Facility located at 3000 Vera Street, Baltimore, MD 21226 have negatively affected the Baltimore Harbor, Patapsco River, and the surrounding Chesapeake Bay watershed by polluting its waters. Baltimore Harbor and the Chesapeake Bay are both separately impaired for sediment, while the entire Chesapeake Bay is under a TMDL to reduce the levels of sediment in its waters.³³ By discharging sediment-laden water, Baltimore Scrap Corporation, Inc. and Old Fairfield, LLC are further impairing the Baltimore Harbor. If left unchecked, the Facility's discharges will continue to injure Baltimore Harbor, the Patapsco River and ultimately, the Chesapeake Bay watershed.

IV. CONCLUSION

The Baltimore Scrap Corporation, Inc. and Old Fairfield, LLC have violated and are currently violating the CWA at the Facility located at 3000 Vera Street, Baltimore, MD 21226. Due to the high number and repetitive nature of the violations, we believe that Baltimore Scrap Corporation, Inc. and Old Fairfield, LLC will continue discharging in violation of the General Permit. Accordingly, EIP intends to file suit on behalf of Blue Water Baltimore to enjoin and abate the aforementioned violations, ensure future compliance with the CWA, obtain civil penalties, recover attorneys' fees and costs of litigation, and obtain other appropriate relief.

If you have any questions regarding the allegations in this notice or believe any of the foregoing information may be in error, please contact Sylvia Lam at the phone number or email address listed below. We would also welcome an opportunity to discuss a resolution of this matter prior to the initiation of litigation if you are prepared to remedy the violations discussed above.

³³ U.S. Environmental Protection Agency, Chesapeake Bay TMDL Fact Sheet (July 2015), *available at* http://www.epa.gov/sites/production/files/2015-07/documents/bay_tmdl_fact_sheet.pdf.

Sincerely,



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